



IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945.

No.

WILLIAM JEFFRIES, JR., CHARLES R. AIKEN, administrator
de bonis non of the estate of William Jeffries, deceased,
DRAPER AND KRAMER, INCORPORATED, a corporation, and
CHICAGO TITLE AND TRUST COMPANY, a corporation, as
Trustee, etc.,

Petitioners,

vs.

NELLIE JEFFRIES and HARPER FRENCH,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

The Opinion.

The opinion rendered in this cause by the Circuit Court of Appeals for the Seventh Circuit is set forth in full at pages 230 to 234 of the transcript, and is reported, not,

however, with complete accuracy, in volume 149 of the Federal Reporter, second series, at page 555 (*French v. Jeffries*, 149 F. 2d 555).

Jurisdiction

The judgment sought to have reviewed was entered by the court of appeals on May 7, 1945, and a rehearing in that court was denied June 14, 1945 (Tr. 235, 275). This application is made within the statutory period of three months thereafter.

A full statement of the jurisdictional basis is set out in the petition proper (*ante* p. 3).

Statement of the Case.

Respondent Harper French, a citizen of Michigan, filed his complaint in the District Court for Northern Illinois against the respondent Nellie Jeffries and the petitioners, all citizens of Illinois (Tr. 2-3). French asserted he was a half brother of William Jeffries, deceased, and through such kinship and an express trust he was entitled to a half interest in the decedent's estate, alleged to be worth more than one hundred thousand dollars, then being administered in the Probate Court of Cook County, Illinois (Tr. 2-12).

Joined as parties defendant to the complaint in equity were the widow and the only child of the deceased, his administrator and the management agents of the personal representative, and the trustee of title to the decedent's property (Tr. 2). All of the defendants answered, and the widow upon leave filed a countercomplaint claiming she was the sole owner of the estate assets by virtue of several trusts and because of defects in certain assign-

ments of the property (Tr. 19-50). By her countercomplaint the widow asked that the administrator turn over the estate assets in his hands as her individual property, that the State proceedings be perpetually enjoined, and that a full accounting of the administration be made (Tr. 47-50).

At the hearings before the Master, French admitted under cross examination that he was not actually related to the deceased, they having merely grown up as orphan boys together, and that his claims of trust were false (Tr. 184). More than a thousand pages of the transcript were thereafter taken up with evidence introduced by the widow in an effort to sustain her various claims of ownership (Tr. 185-209). Proof was also taken under a counterclaim filed by the son for fraud and deceit committed in the attempts by the parties to deprive him of his inheritance (Tr. 217-219).

By a final decree rendered June 23, 1944, the chancellor dismissed the complaint and the counterclaims for want of equity (Tr. 113-126). The widow prosecuted an appeal from the dismissal of her countercomplaint (Tr. 42). No appeal was taken from the decree dismissing the complaint or from the decree dismissing the son's counterclaim.

Upon review, the principal question presented by the widow for determination in the court of appeals was, as stated by her (Tr. 146-147):

"Did the court obtain jurisdiction of the above entitled cause by reason of the false and fraudulent claim of Harper French, who claimed at one time to be a resident of Detroit and at a later date a resident of Chicago, and who admitted that he was not a brother of William Jeffries and that he did not have a claim for any sum or sums whatsoever against the Estate and that the suit was filed by fraud?"

At the hearing in the court of appeals the administrator moved to dismiss the appeal as moot on the ground that all questions of substance presented by the appellant had been finally and conclusively adjudicated against her by other courts of competent jurisdiction (Tr. 268).

By its opinion handed down May 7, 1945 (Tr. 230), the court of appeals ignored the motion to dismiss the appeal and ordered the cause dismissed for want of jurisdiction (Tr. 234). The court found in this respect as follows (Tr. 230-234, 245):

"The evidence shows that Harper French never had any cause of action of any kind . . . The claim asserted by French was a fraud and had no existence whatever in fact. He had no claim of any kind against any one he sued . . . The case just did not exist and was filed fraudulently, the result of the scheme to defraud the estate of William Jeffries, Sr."

In ordering the dismissal for want of jurisdiction, the court of appeals held (Tr. 233):

"Where the claim asserted by the plaintiff has no existence in point of fact and is fraudulently asserted in a complaint, such claim is incapable of supporting the jurisdiction of the court."

The reviewing court below disposed of the appeal in the following manner (Tr. 234):

"The case is dismissed for want of jurisdiction."

Errors Relied On.

A.

The court of appeals erred in ordering the cause dismissed for want of jurisdiction instead of for want of equity merely because the plaintiff's claim had no existence in point of fact and was intended to defraud the defendants.

B.

The court of appeals erred in holding that a cause must be dismissed by the District Court the moment there is any indication that the plaintiff's claim is fictitious.

C.

The court of appeals erred in permitting a party who invoked the court's jurisdiction by filing a counterclaim to question the jurisdiction solely to avoid an unfavorable ruling.

D.

The court of appeals erred in setting aside a judgment which had not been appealed and was not before the reviewing court.

E.

The court of appeals erred in dismissing a cause for want of jurisdiction without deciding a motion by one of the appellees to dismiss the appeal as moot.

F.

The court of appeals erred in finally disposing of the cause in the reviewing court by dismissing the case for want of jurisdiction instead of reversing the judgment and remanding the cause to the District Court for further proceedings.

G.

The court of appeals erred in rewarding a party it had found guilty of fraud.

ARGUMENT.

May It Please The Court:

A.**Falsity Alone Is Not Sufficient To Justify Dismissal Of
Claim For Want Of Jurisdiction.**

It was not contended, nor was it found, that the complaint of Harper French had been filed for the purpose of creating a case within the federal jurisdiction. The court of appeals ordered the case dismissed for want of jurisdiction instead of for want of equity solely because the plaintiff had admitted his claim was fictitious. The court below held:

“Where the claim asserted by the plaintiff has no existence in point of fact and is fraudulently asserted in a complaint, such a claim is incapable of supporting the jurisdiction of the court.”

This conclusion of the court below is in conflict with repeated holdings of this Court that before a trial court may dismiss a cause under the statute for want of jurisdiction it must be found that the case was framed for the purpose of invoking the federal jurisdiction.

The most recent expression to this effect is found in *St. Paul Indemnity Co. v. Cab Co.*, 303 U. S. 283, where the Court defined the rule to be as follows (p. 289):

“If from the face of the pleadings it is apparent to a legal certainty, that the plaintiff cannot recover the amount claimed, or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never

was entitled to recover that amount, *and that his claim was therefore colorable for the purpose of conferring jurisdiction, the suit will be dismissed.*" (Italics supplied.)

The decision below is the first time it has ever been held that falsity alone, without any purpose of creating a case cognizable in the federal court, is sufficient to require dismissal of the complaint for want of jurisdiction. Such doctrine, if approved, will open the door to much abuse and difficulty.

Under the ruling in the instant case all a losing litigant need do to escape the bar of an adjudication on the merits is to concede that his claim is false. Such a development, according to the decision at bar, requires that the trial court forthwith, without proceeding farther, dismiss the cause for want of jurisdiction.

B.

Summary Dismissal For Want Of Jurisdiction Is Proper Only When Facts Create A Legal Certainty.

The court of appeals has unfairly reflected upon the master and the chancellor for failing to dismiss this cause the moment the plaintiff admitted that his claim was without merit. In this respect the court held:

"When the Master and the District Court saw that it was a fake suit, it was the Master's duty to recommend dismissal, and the Court's duty to dismiss the case."

The violent conflict between the ruling at bar and the holdings of this Court on the same subject is perhaps best illustrated by *Barry v. Edmunds*, 166 U. S. 550, 559:

"It might happen that the judge, on the trial or

hearing of a cause, would receive impressions amounting to a moral certainty that it does not really and substantially involve a dispute or controversy within the jurisdiction of the court. But upon such a personal conviction, however strong, he would not be at liberty to act, unless the facts on which the persuasion is based, when made distinctly to appear on the record, create a legal certainty of the conclusion based on them. Nothing less than this is meant by the statute when it provides that the failure of its jurisdiction, on this account 'shall appear to the satisfaction of said circuit court.' "

In *Wetmore v. Rymer*, 169 U. S. 115, this Court said (p. 128):

"A suit cannot be properly dismissed by a circuit court as not substantially involving a controversy within its jurisdiction unless the facts when made to appear on the record *create a legal certainty of that conclusion.*"

The Court employed language in deciding the case of *Put-In-Bay Waterworks Co. v. Ryan*, 181 U. S. 409, which applies with much force to this case. The Court said there (p. 430):

"Our impression of this record has not constrained us to hold that the Circuit Court lost its apparent jurisdiction of the case by reason of disclosures made subsequently in the progress of the case . . . Within the letter of the statute there was a controversy between citizens of different States in which the matter in dispute was over the sum or value of two thousand dollars."

After setting forth the provisions of section 37, the Court went on to say (p. 430):

"And it has been several times decided by this court that a suit cannot properly be dismissed by a circuit

court as not involving a controversy of an amount sufficient to come within its jurisdiction unless the facts when made to appear on the record, *create a legal certainty of that conclusion.*

"It is not clearly shown in this report that, at any time after the suit was brought it was made to appear, *to the satisfaction of the Circuit Court*, that the suit did not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court."

In *Smithers v. Smith*, 204 U. S. 632, the District Court dismissed the cause under section 37 after finding that the plaintiff had fraudulently stated his claim "for the purpose of conferring jurisdiction upon the court". This Court reversed the judgment with the following observations (pp. 644, 646):

"We know of no case that holds that in such a situation the judge of the circuit court is authorized to interpose and try a sufficient part of the controversy between the parties to satisfy himself that the plaintiff ought to recover less than the jurisdictional amount, and to conclude, therefore, that the real controversy between the parties is concerning a subject of less than the jurisdictional value, and we think that by sound principle he is forbidden to do so . . . In deciding that the defendants had not acted jointly, as the plaintiff alleged and the defendants denied, he determined not a jurisdictional fact but an essential element of the merits of the dispute upon which the parties were at issue."

C.

A Counterclaimant Is Estopped From Challenging Jurisdiction of the Complaint.

Nellie Jeffries obtained leave from the District Court to file her countercomplaint. When the chancellor denied her

claims for want of equity, she complained on appeal that the court lacked jurisdiction.

The appellees in the court of appeals urged that Nellie Jeffries was estopped from challenging the jurisdiction having invoked the jurisdiction by her counterclaim. This point was completely ignored by the reviewing court thus effectually denying it.

In permitting Nellie Jeffries to attack the trial court's jurisdiction upon this record, the opinion below is in conflict with a decision of the Second Circuit on the same matter. In *O. J. Lewis Mercantile Co. v. Klepner*, 176 Fed. 343, the principal contention was, as here, that the complaint should have been dismissed for want of jurisdiction. The court held in the *Klepner case* (p. 346):

“The defendant interposed a counterclaim, and having invoked the jurisdiction of the court for its own benefit is now estopped from denying it.”

This Court denied certiorari in the *Klepner case* (216 U. S. 620), and the decision was cited with approval in the recent case of *St. Paul Indemnity Co. v. Cab Co.*, 303 U. S. 283.

D.

A Court Of Appeals Cannot Review A Judgment. That Is Not Before It..

The proceedings in the District Court were made up of three separable controversies: (1) French's claim against the estate; (2) Nellie Jeffries' claim against the estate; and, (3) the claim of William Jeffries, Jr., against French and Nellie Jeffries. By its definitive decree the District Court dismissed each of these claims for want of equity.

The dismissals of French's complaint and of the counterclaim by William Jeffries, Jr., were not appealed and were, therefore, not brought before the court of appeals for determination.

Nellie Jeffries appealed, as she might, only from those orders or judgments which were adverse to her. However, the record submitted with her appeal included all of the proceedings had in the trial court.

Nellie Jeffries in her briefs prayed for the following relief:

"The decree of the District Court should be reversed and remanded with directions to dismiss the complaint of the plaintiff and the countercomplaint without prejudice for want of jurisdiction and that the said cause be transferred to the Circuit Court or Superior Court for hearing."

The court of appeals assumed it had jurisdiction to rule upon the decree dismissing plaintiff's complaint for want of equity, and directed its dismissal for want of jurisdiction.

The Federal Reporter describes the appeal in this case as follows (*French v. Jeffries*, 149 F. 2d 555, 556):

"*From a judgment against plaintiff on his complaint and against named defendant (Nellie Jeffries) on her countercomplaint, named defendant appeals.*

"*Case dismissed for want of jurisdiction.*"

In thus reviewing the decree dismissing plaintiff's complaint for want of equity, the court passed upon a judgment not before it and over which it, therefore, could exercise no power or control. In passing, therefore, upon the decree which dismissed Nellie Jeffries' countercomplaint, the

attack upon jurisdiction was collateral and the challenge as to the findings of jurisdictional facts was thereby precluded.

This Court in *Reed v. Allen*, 286 U. S. 191, said (p. 198):

"It is hardly necessary to say that jurisdiction to review one judgment gives an appellate court no power to reverse or modify another and independent judgment."

In *Bass v. B. & O. Term. R. Co.*, 142 F. 2d 779, the court said (p. 781):

"We cannot review an order from which no appeal has in fact been taken."

The holding of *Brady v. Bernard & Kittinger*, 170 Fed. 576, would seem to be decisive here (p. 581):

"The rule which appellants seek to invoke, that an appellate court will remand a cause with instructions to dismiss whenever it appears from the record that there was no jurisdiction in the court below, has no application except where such want of jurisdiction affirmatively appears upon the face of the record in a case otherwise properly before the appellate court . . . And the appellate court has no jurisdiction to so remand where the alleged want of jurisdiction in the court below is predicated upon an issue of fact adjudicated in the court below in favor of the jurisdiction, and where the order or judgment in which such adjudication was involved is not properly before the appellate court for review."

E.

An Appellate Court May Not Decide Merely Moot Questions.

Each of the claims of trust and defective assignments advanced by Nellie Jeffries in her countercomplaint had

previously been adjudicated against her in the Circuit and Superior Courts of Cook County, Illinois, the only other courts having jurisdiction. The administrator at the hearing in the court of appeals pointed out the absence of any actual controversy between the parties involving real and substantial rights, and moved to dismiss the appeal as moot.

Here, again, the court of appeals refused to notice the point thereby denying the motion.

This Court passed upon a similar contention in *Mills v. Green*, 159 U. S. 651, saying (p. 653):

“The defendant moved to dismiss the appeal, assigning as one ground of his motion ‘that there is now no actual controversy involving real and substantial rights between the parties to the record, and no subject matter upon which the judgment of this court can operate.’

“We are of opinion that the appeal must be dismissed upon this ground, without considering any other question appearing on the record or discussed by counsel.

“The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal.”

F.**When Dismissal For Want Of Jurisdiction is Ordered,
Court Of Appeals Must Remand Cause For Further Pro-
ceedings.**

Disposition of the cause in the court of appeals is made in the following manner:

"It is our duty, where the District Court so failed to dismiss for want of jurisdiction and proceeds to dismiss on the merits, to dismiss the case . . . The cause is dismissed for want of jurisdiction."

The section of the Judicial Code under which the court of appeals attempted to act in dismissing the cause provides in pertinent respects as follows (28 U. S. C. 80):

"If in any suit commenced in a district court . . . it shall appear to the satisfaction of the said district court . . . that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court . . . *the said district court shall . . . dismiss the suit.*"

Section 877 of the Judicial Code provides as follows (28 U. S. C. 877):

"Whenever on appeal or writ of error or otherwise a case coming from a District Court shall be reviewed and determined in the Circuit Court of Appeals in a case in which the decision in the Circuit Court of Appeals is final, *such cause shall be remanded to the said district court for further proceedings* to be there taken in pursuance of such determination."

Obviously the opinion of the court below dismissing the cause for want of jurisdiction is in direct violation of the command of the statute. Under the act the judgment must be reversed and remanded to the District Court for further proceedings. As the record stands now, the decree has not been reversed.

Disposing of such an appeal the Court said in *Piedmont v. Nor. Ry. v. United States*, 280 U. S. 469, 478:

"Since plaintiff's bill was dismissed on the merits when it should have been dismissed for want of jurisdiction, the decree must be reversed with directions to dismiss the bill for want of jurisdiction."

G.

A Court Of Equity, Either Trial Or Appellate, Should Not Reward A Party It Finds Guilty Of Fraud.

The court of appeals has found Nellie Jeffries a principal conspirator in the fraudulent assault upon the estate. Then it determines her appeal in a way which has as its only practical effect the benefiting of Nellie Jeffries. In other words, the court below does equity by rewarding her who is guilty of fraud.

It is conceded that the various claims advanced against the estate by Nellie Jeffries are devoid of merit. In *O. J. Lewis Mercantile Co. v. Klepner*, 176 Fed. 343, the Second Circuit Court of Appeals held (p. 344):

"No serious contention based upon the merits can be urged . . . This fact, coupled with the additional fact that the litigation has already extended over a period of more than six years involving three trials and two appeals, predisposes the court not to dismiss the cause upon a doubtful question of jurisdiction."

Respectfully submitted,

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Counsel for Petitioners.